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7 UNITED STATES DISTRICT COURT
8 IN THE DISTRICT OF ALASKA - FAIRBANKS

9 UNITED STATES OF AMERICA,
10 for the Use and Benefit of
MIDSTATE EQUIPMENT, INC.,
an Alaska corporation,

11 Plaintiffs,

12 v.

13 AHTNA CONSTRUCTION &
14 PRIMARY PRODUCTS, LLC, an
Alaska limited liability corporation;
15 and GREAT AMERICAN
INSURANCE COMPANY, a
16 foreign corporation,

17 Defendants.

Case No. 4:19-cv-00010-JWS

COMPLAINT FOR BREACH
OF CONTRACT, WRONGFUL
TERMINATION, ACCOUNT
STATED, VIOLATION OF THE
PROMPT PAYMENT ACT,
CLAIM AGAINST MILLER
ACT PAYMENT BOND,
UNFAIR TRADE PRACTICES,
AND UNFAIR CLAIMS
SETTLEMENT PRACTICES

18 Plaintiffs, United States of America, for the use and benefit of Midstate
19 Equipment, Inc. (collectively "Midstate") allege as follows:

20 **I. PARTIES**

21 1. Midstate is, and at all times material to this action was, a
22 corporation organized and existing under the laws of the State of Alaska (Entity
23 No. 57218D), and a licensed contractor under the laws of the State of Alaska
24 (License No. CONE29580), and has met all other prerequisites to maintain this
action.

COMPLAINT – 1

LAW OFFICES OF
AHLERS CRESSMAN & SLEIGHT PLLC
999 THIRD AVENUE, SUITE 3800
SEATTLE, WASHINGTON 98104-4023
(206) 287-9900 Fax: (206) 287-9902

177391.1 | 23089.5

1 2. Midstate supplied and delivered top soil and “woody debris” as a
2 subcontractor to Defendant, Ahtna Construction & Primary Products, LLC
3 (“Ahtna”), for the construction project known as the Delta-Clearwater
4 Remediation Project Phase 2 in Delta Junction, Alaska—Solicitation No.
5 12SPEC18B004 (the “Project”). The Project was constructed by the United
6 States of America through the Department of Agriculture Natural Resources
7 Conservation Service (“USDA-NRCS”).

8 3. Ahtna is an Alaska limited liability company. Ahtna was the
9 prime contractor to the USDA-NRCS on the Project.

10 4. Great American Insurance Company (“GAIC”), is an Ohio
11 corporation, duly organized and existing under the laws of the State of Ohio with
12 its principal place of business in Cincinnati, County of Hamilton, State of Ohio,
13 and authorized and licensed to do business and is doing business in the State of
14 Alaska as a surety issuing bonds required by law or contract by the State of
15 Alaska, the United States of America, and various agencies within the
16 jurisdiction of this Court.

17 **II. JURISDICTION AND VENUE**

18 5. This Court has jurisdiction, as this case arises under the Miller Act,
19 40 U.S.C. §§ 3131 and 3133. In accordance with the Miller Act, and as part of
20 its obligations pertaining to the Project, Ahtna, as principal, and GAIC, as
21 surety, provided to the United States of America a payment bond (the “Bond”).
22 Ahtna and GAIC are each jointly and severally liable for full payment to persons
23 and entities who supplied labor and materials in connection with the Project,
24 including Midstate. GAIC’s liability is limited to the penal sum of the Bond.

1 6. This Court also has jurisdiction over this dispute pursuant to 28
2 U.S.C. §§ 1331, 1352, and 1367.

3 7. This action involves a payment dispute on a Federal Government
4 construction project in Delta Junction, Alaska. Venue is proper in this Judicial
5 District, pursuant to 28 U.S.C. § 1391 and 40 U.S.C. § 3133(b)(3)(B), because
6 the Project is located in this Judicial District, and the events or omissions giving
7 rise to the claims occurred in this District.

8 **III. BREACH OF CONTRACT AND WRONGFUL TERMINATION**

9 8. Midstate entered into a purchase order subcontract (the
10 “Subcontract”) with Ahtna, by which Midstate agreed to provide labor and
11 materials in connection with the Project. The Subcontract was a lump sum
12 agreement. Midstate was to be paid at unit prices at \$2.62 per square yard of
13 delivered top soil, and \$2.60 per square yard of delivered woody debris.

14 9. A disagreement arose between the parties as to how the delivered
15 quantities were to be measured for payment, with Ahtna stating that it would
16 measure the volume of delivered quantities after Ahtna installed the top soil and
17 woody debris in place on the Project (the “in-place measurement”), while
18 Midstate relied on its quote and the Subcontract stating that measurement for
19 delivered quantities would take place as delivered in the truck before Ahtna
20 installed the materials (the “truck-load” measurement).

21 10. During the Project, to resolve the dispute, Ahtna and Midstate
22 agreed that measurement for materials would be by “truck-load” at a standard
23 measurement of 120 square yards per truck load for woody debris and 27 truck
24 cubic yards (121.5 square yards at 8 inches deep) for top soil. Ahtna confirmed
the Parties’ agreement by email from its President to Midstate dated August 22,

1 2018, stating: “I’ll agree to truck load measurement of 120 sq./yd. for woody
2 debris and 27 cy on top soil.”

3 11. Midstate then modified its previously submitted invoices to match
4 the terms of the Parties’ agreement stated in Ahtna’s August 22, 2018 email.
5 Ahtna then paid Midstate’s modified invoices according to the terms of the
6 August 22, 2018 email.

7 12. Midstate continued invoicing Ahtna according to the August 22,
8 2018 email until work halted for the “winter shutdown.” Before the winter
9 shutdown, Ahtna approved the Midstate invoices submitted after August 22,
10 2018 as accurate and properly payable, but failed to remit payment.

11 13. After the Project halted for the “winter shutdown,” having
12 received the full benefit of Midstate’s contract performance, Ahtna transmitted a
13 letter dated November 2, 2018 stating it was unilaterally adjusting the only paid
14 invoice and the approved-but-unpaid invoices to withhold a total of
15 \$268,313.64. Ahtna’s stated basis was that it conducted an audit of the materials
16 after Ahtna installed them using the “in-place measurement” method and
17 determined that the quantities were not the same as Midstate billed using the
18 “truck load measurement” the Parties agreed to use and confirmed in Ahtna’s
19 August 22, 2018 email.

20 14. Ahtna has failed to pay Midstate for the work Midstate properly
21 performed in accordance with the Subcontract and the Parties’ August 22, 2018
22 agreement and, therefore, has breached the Subcontract with Midstate.

23 15. During the “winter shutdown,” Ahtna began actively soliciting
24 other contractors to perform Midstate’s work on the Project. As a result,
Midstate had reasonable uncertainty that Ahtna intended to honor the

1 Subcontract and have Midstate return to the Project. At all times Midstate was
2 willing and able to return to perform the Subcontract, even in light of the
3 payment dispute.

4 16. Midstate demanded written assurances that Ahtna would honor the
5 Subcontract and have Midstate return to finish the Project after the “winter
6 shutdown.” Ahtna failed to either respond to Midstate’s demand or otherwise
7 provide assurances.

8 17. Ahtna, by failing to respond or provide assurances, anticipatorily
9 breached the Subcontract thereby terminating the Subcontract. Midstate had
10 fully performed all obligations it owed by the terms of the Subcontract at the
11 time Ahtna effectively terminated the Subcontract. Ahtna’s termination of the
12 Subcontract was both wrongful and a material breach of the Subcontract.

13 18. Ahtna owes Midstate such damages as will be proved at trial,
14 which for purposes of this Complaint are stated to be a sum not less than
15 \$268,314 for Subcontractor work performed but not paid, as well as its damages
16 for Ahtna’s wrongful termination which for the purposes of this Complaint are
17 stated to be a sum not less than \$498,500, together with prejudgment interest,
18 attorneys’ fees, and costs, as the reasonable, unpaid value of Midstate’s work
19 and damages for Ahtna’s wrongful termination of Midstate.

20 **IV. ACCOUNT STATED**

21 19. During its performance of work on the Project, Midstate submitted
22 change orders, invoices, and/or payment applications to Ahtna for its services,
23 labor, materials, supplies, and equipment, which stated the balance owed to
24 Midstate as of the date of each change order, invoice, and/or payment
application.

1 20. Ahtna paid some of Midstate's submitted invoices without
2 objection, and approved others as accurate and appropriate for payment. Several
3 months later, after receiving the benefit of Midstate's performance, Ahtna
4 unilaterally sought to adjust those paid and/or approved invoices.

5 21. Ahtna failed to object to Midstate's invoices or other statements of
6 monies owed within a reasonable time.

7 22. Midstate's invoices/statements and Ahtna's agreement regarding
8 the sums requested by Midstate establish an account stated. Midstate is entitled
9 to payment of the amount stated in each invoice as a matter of law, including
10 applicable late fees and interest at the highest rate allowed by contract or statute,
11 owing on the amount.

12 **V. CLAIM AGAINST PAYMENT BOND UNDER MILLER ACT**

13 23. Ahtna has failed to pay Midstate the principal sum of \$268,314 for
14 work properly performed prior to the winter shutdown, and has failed to pay
15 additional sums owed for work Midstate properly performed during the winter
16 shutdown preparing to return to work as will be proven at trial.

17 24. At the time of filing suit, more than ninety (90) days, but less than
18 one (1) year, have expired from the last date upon which Midstate furnished
19 labor, equipment, and materials to the Project. Midstate has otherwise satisfied
20 all the requirements for pursuing a claim against the Bond.

21 25. In accordance with the terms of the Bond and Miller Act, Ahtna
22 and GAIC are jointly and severally liable to Midstate for a sum not less than
23 \$268,314, and other sums for preparations to return to work following the winter
24 shutdown, as well as unrecouped site development costs for the work as will be
proven at trial, together with interest at the maximum rate legally permissible

1 from the date said sums were due, any late payment interest penalty as provided
2 under the Prompt Payment Act, costs, attorneys' fees, and such other amounts as
3 may be proven at trial and to which Midstate is entitled either by statute or under
4 the Subcontract.

5 **VI. VIOLATION OF PROMPT PAYMENT ACT**

6 26. Ahtna's conduct in failing and refusing to pay Midstate for all
7 labor and material it provided to the Project is a violation of 31 U.S.C. § 3901, *et*
8 *seq.* ("the Prompt Payment Act"). As a consequence, pursuant to the Prompt
9 Payment Act, Midstate is entitled to be paid the full Subcontract balance, as well
10 as the statutory late payment interest penalty calculated beginning the day after
11 the required payment date.

12 **VII. QUANTUM MERUIT**

13 27. Midstate is entitled to be compensated for the fair and reasonable
14 value of its work, material, and services. The reasonable value of the labor,
15 materials, and services provided for and on behalf of Ahtna is \$268,314, as well
16 as other sums for preparations to return to work following the winter shutdown,
17 as well as unrecouped site development costs for the work as will be proven at
18 trial.

19 **VIII. PROMISSORY ESTOPPEL**

20 28. To resolve payment and performance disputes during the Project,
21 Ahtna promised that it would pay Midstate for the volume of delivered top soil
22 and woody debris by "truck-load measurements" (not "in-place") at a standard
23 rate of 120 square yards per truck load for woody debris and 27 truck cubic
24 yards for top soil. Ahtna confirmed the Parties' agreement by email from its

1 President to Midstate dated August 22, 2018, stating: “I’ll agree to truck load
2 measurement of 120 sq./yd. for woody debris and 27 cy on top soil.”

3 29. Ahtna’s agreement to resolve the payment dispute induced
4 Midstate to continue performance pursuant to the terms of the Subcontract
5 through the winter-shutdown. Ahtna foresaw or should have foreseen that its
6 August 22, 2018 email confirming the Parties’ agreement would cause Midstate
7 to continue performing through the winter-shutdown.

8 30. During the winter shutdown, after receiving the full benefit of
9 Midstate’s performance in the prior season, Ahtna immediately abandoned the
10 Parties’ agreement stated in Ahtna’s August 22, 2018 email and withheld
11 payment premised on “in-place measurements” (as opposed to the agreed upon
12 “truck load measurements)—taking the same position for payment withholding
13 that it had taken prior to the August 22, 2018 email and agreement.

14 31. Enforcement of Ahtna’s promise to honor the Parties’ agreement
15 stated in Ahtna’s August 22, 2018 email is necessary to avoid injustice for
16 Midstate’s continued performance through the winter-shutdown and beyond.

17 32. Midstate is entitled to recover \$268,314, as well as other sums for
18 preparations to return to work following the winter shutdown, as well as
19 unrecouped site development costs for the work as will be proven at trial.

20 **IX. AHTNA’S UNFAIR TRADE PRACTICES**

21 33. To resolve payment and performance disputes during the Project,
22 Ahtna promised that it would pay Midstate for the volume of delivered top soil
23 and woody debris by “truck-load measurements” (not “in-place”) at a standard
24 rate of 120 square yards per truck load for woody debris and 27 truck cubic
yards for top soil. Ahtna confirmed the Parties’ agreement by email from its

1 President to Midstate dated August 22, 2018, stating: “I’ll agree to truck load
2 measurement of 120 sq./yd. for woody debris and 27 cy on top soil.”

3 34. During the winter shutdown, after receiving the full benefit of
4 Midstate’s continued performance in the prior season, Ahtna abandoned the
5 Parties’ agreements stated in Ahtna’s August 22, 2018 email and withheld
6 payment premised on “in-place measurements”—taking the same position for
7 payment withholding that it had taken prior to the August 22, 2018 email and
8 agreement.

9 35. Ahtna’s agreement and subsequent August 22, 2018 email
10 confirming the same was made solely to induce Midstate’s continued
11 performance through the winter-shutdown. Ahtna never intended to meet the
12 terms of the agreement it made with Midstate or its August 22, 2018 email.

13 36. Midstate and Ahtna are businesses engaged in the exchange of
14 goods and services constituting trade and/or commerce.

15 37. Ahtna’s conduct in making an “agreement” it never intended to
16 keep was made for the sole purpose of inducing Midstate’s continued
17 performance through the winter shutdown. Ahtna’s deception is further
18 corroborated by it abandoning the agreement upon receiving the full benefit of
19 Midstate’s performance. Ahtna’s conduct is a violation of Alaska’s Unfair Trade
20 Practices and Consumer Protection Act at AS 45.50 *et seq.* (the “UTPCPA”).

21 38. Ahtna’s violation of the UTPCPA entitles Midstate to its actual
22 damages incurred in an amount to be proven at trial, but not less than \$268,314,
23 as well as other sums for preparations to return to work following the winter
24 shutdown, as well as unrecouped site development costs for the work, along with
attorney’s fees, interest, and treble damages thereon.

1 **X. UNFAIR CLAIMS SETTLEMENT PRACTICE AND BAD FAITH**

2 39. On December 21, 2018, Midstate transmitted a formal Notice of
3 Miller Act Bond Claim to GAIC and Ahtna for the unpaid Subcontract balance.
4 Midstate provided all relevant documentation for GAIC's consideration,
5 including the August 22, 2018 email from Ahtna confirming the agreed pricing
6 arrangement, and detailed explanation of the dispute and basis for recovery.

7 40. On February 22, 2019, GAIC denied Midstate's Bond Claim for
8 the unpaid Subcontract balance in whole. GAIC's denial did not provide any
9 reference to, or analysis of, the August 22, 2018 email agreement from Ahtna to
10 Midstate.

11 41. GAIC's investigation failed to satisfy Alaska's Unfair Claim
12 Settlement Practices at AS 21.36 *et seq.* and 3 AAC 26 *et seq.* and constitutes a
13 deceptive and unfair trade practice under the UTPCPA.

14 42. GAIC also breached its obligation owed to Midstate as the obligee
15 under the Bond to act in good faith.

16 43. Midstate is entitled to recover its actual damages incurred for
17 GAIC's bad faith conduct and violation of the UTPCPA in an amount to be
18 proven at trial, but not less than \$268,314, as well as attorney's fees, interest,
19 and treble damages thereon.

20 **XI. PRAYER FOR RELIEF**

21 WHEREFORE, Midstate requests Judgment as follows:

22 A. Against Ahtna and GAIC, jointly and severally, for work properly
23 performed but not paid at a sum to be proven at trial, but for the purposes of this
24 Complaint stated to be not less than \$268,314, as well as other sums for
preparations to return to work following the winter shutdown, as well as

1 unrecouped site development costs for the work, or such other sum as will be
2 proven at trial, plus interest at the maximum rate legally permissible from the
3 date said sums were due, the late payment interest penalty as provided under the
4 Prompt Payment Act, attorneys' fees, and costs and business
5 destruction/diminution damages in an amount to be proved at time of trial;

6 B. Against Ahtna for breach of contract, wrongful termination,
7 quantum meruit, and promissory estoppel in amount to be proven at trial, but not
8 less than \$268,314 for work performed but not paid, as well as its damages for
9 Ahtna's wrongful termination which for the purposes of this Complaint are
10 stated to be a sum not less than \$498,500 or as will be proven at trial;

11 C. Against Ahtna for violating Alaska's Unfair Trade Practices and
12 Consumer Protection Act in an amount to be proven at trial which for the
13 purposes of this Complaint are stated to be a sum not less than \$268,314, as well
14 as other sums for preparations to return to work following the winter shutdown,
15 as well as unrecouped site development costs for the work, along with attorney's
16 fees, interest, and treble damages thereon.

17 D. Against GAIC for its breach of its obligation of good faith and fair
18 dealing owed to Midstate as the obligee under the Bond, as well as GAIC's
19 violation of Alaska's Unfair Trade Practices and Consumer Protection Act in an
20 amount to be proven at trial which for the purposes of this Complaint are stated
21 to be a sum not less than \$268,314, as well as other sums for preparations to
22 return to work following the winter shutdown, as well as unrecouped site
23 development costs for the work, along with attorney's fees, interest, and treble
24 damages thereon.

1 E. Attorneys' fees and costs in accordance with the Subcontract or
2 other applicable law; and

3 F. For such other and further relief as the Court may deem just and
4 equitable.

5 DATED: This 10th day of April, 2019.

6 **AHLERS CRESSMAN & SLEIGHT PLLC**

7
8 By: /s/John P. Ahlers
9 John P. Ahlers, ASB 0707048
10 999 Third Avenue, Suite 3800
11 Seattle, Washington 98104-4088
12 Telephone: (206) 287-9900
13 Facsimile: (206) 287-9902
14 Attorneys for Plaintiffs
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

(206) 287-9900

DEFENDANTS

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(907) 276-1550

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

DATE RECEIVED

FILED

COURT CLERK

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)
)
)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff

v.

Defendant

)
)
)
)
)
)
)

Civil Action No. _____

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

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☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: